1951

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File No. O. Indus. Disputes/51
Legal Department.
A BRANCH

Subject:— p 32 F

Opinions under the

Industrial Disputes Act, 1947

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Office of the R.L.A.

Industrial Disputes Act, 1947--sec. 2(b), 17.

'Award' as defined in clause (b) of sec. 2 of the Industrial Disputes Act, 1947 means an interim or final determination by an Industrial Tribunal of any industrial dispute or of any question relating thereto. Industrial dispute as defined in clause (k) means any dispute or difference between employers and employees, or between employers and workmen or between workmenk and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The Tribunal has held that no award could be made in the reference made by Government as it is made without jurisdiction etc. The Tribunal has also not determined any industrial dispute or any question relating thereto by this decision. There is therefore no question of publication of the decision of the Tribunal under sec. 17 of the Act. It would not, therefore, be correct for the Tribunal to call its decision or order as an award not to treat it as such under the Act, when the reference itself being void could not be entertained by the Tribunal.

Id/- (PNM.L.)

Remembrancer of Legal Affairs.

U.O.R. to L.& H. Deptt (B) No. 93- Confl. dated the 27th January 1951.

R.D.P.
28/6/56

5.C.

Legal Department.

Whether 'workshop' is included in 'transport'- Industrial Disputes Act, 1947, sec.2(n)(vi), item 1 in Schedule.

Sub-clause (vi) of clause (n) of section 2 of the Industrial Disputes Act, 1947 provides that "public utility service" means industry any specified in the Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires by notification in the Official Gazette declare to be a public utility service for the purpose of this Act, for such period as may be specified in the notification. Item 1 of the Schedule provides "transport" (other than railways) for the carriage of passengers or goods by land, water or air". By L. & H. Deptt. Notification No. 575/46, dated 16th January 1951 Government has already deddared road transport service operated by the Bombay State Road Transport Corporation in the State to be a public utility service. Workshop means room or building in which manufacture is carried on (see Iyer's Law Lexicon p.1338), "Industry" as defined in section 2(j) means manufacture also. A workshop is an essential thing to maintain running of transport service efficiently. The State Transport Central Workshop at Dapoli is presumably maintained for carrying out repairs to t he transport vehicles of the Corporation and for manufacture of spare parts vehicles. It would therefore appear that the workshop in question would be covered by the 'transport' industry in the Schedule to the Act. The presumption made by the Secretary, L. & H. Deptt. is correct.

Id/- (J.R.D.)

Additional Secretary to Government.

U.R. to L.& H.D.No.2534, dated the 10th Fabuary 1951.

R.D.P. 28/6. S.C

Legal Department.

Bombay Industrial Relations Act, 1946. sec. 79(4).

Industrial Disputes (A.T.) Act, 1950. Sec. 20.

The first question raised is -

(A) Whether the remedy available to the employees ~~xxxx

to 10-7-1947 some workers were in the employ of Shri Ram Mills Ltd., but ~~xxxix~~ after the standardisation award their services were terminated with effect from 10-7-47 from which date they passed under a contractor who agreed to supply labour to the Mills. The services of these workers were terminated by the contractor with effect from 10-8-1948 and, it appears, that the question whether this is contract labour or not is under reference to the Labour Court. Unless this question is decided by the Labour Court and the contract labour for this period is treated as employees of the mill and that they are entitled to the money under the award it would not be feasible to invoke the provisions of section 20 of the Industrial Disputes~~xx~~ (A.T.) Act, 1950. The Labour Court will also have to decide what amounts are due to these employees when a decision on the point stated above is taken.

2. The second and third questions raised by the Deputy Commissioner of Labour (Welfare) are as follows:-

(B) "hether it can be said that the money under the award given under the Bombay Industrial Relations Act is due from an employer for the purpose of section 20 of the Labour Appellate Tribunal Act even in respect of those months for which there is no relief available under the Bombay Industrial Relations Act, 1946, under which the award was given.

(c) Whether any time limit under the Specific Relief Act in any way comes in the way of availing the remedy under sec-

section 20 of the Labour ~~Court~~ Appellate Tribunal Act.

Labour and Housing Department is of the view that scope of section 20 of the Industrial Disputes (A.T.) Act is not limited by the provisions of ~~any~~ other law and the amount due under any award can be recovered under that section irrespective of limitation in respect of time imposed by the Bombay Industrial Relations Act or any other law. This view of the Labour and Housing Department appears to be correct. The Bombay Industrial Relations Act makes no provision for recovery of dues under the award and the only remedy for enforcing the recovery of dues under the award is by obtaining a declaration of illegal change and direction for its withdrawal. This remedy as stated by the Industrial Court is barred by limitation under section 79(4) of that Act. But the employee can recover the amount by filing a civil suit or by any other remedy if available to them. Section 20 of the Industrial Disputes (A.T.) Act gives them an additional remedy for recovery of the amount made under the award and would be available in this case.

3. The last question is, whether the recovery of the arrears of the money due to the employees in the present case can be recovered also from the "employer" assuming that it does not fall within the definition of the word "employer" in the Industrial Disputes ~~Act~~ Act, 1947. Section 20 (i) of the Industrial Disputes (A.T.) Act provides that any money due from an employer under the award shall be recovered etc. The word "Employer" is defined under section

2(g) and has been given the meaning assigned to it in sec. 2 of the Industrial Disputes Act, 1947. The Deputy Director of Labour (Welfare) states that the definition of "employer" is not on the lines given under section 3(14)(e) of the Bombay Industrial Relations Act wherein the owner of the undertaking is an employer in respect of also the persons employed by the contractor. The assumption made by the Deputy Commissioner that "employer" as defined in the Industrial Relations Act does not fall within the definition of the word "employer" in the Industrial Disputes (A.T.) Act does not appear to be correct because the word is not difined i in relation to an industry carried on by an owner such as Shri Ram Mills. There, would, therefore, be no difficulty in recovering the dues from the owner of the Mills. The whole legal position may be reviewed after the decision of the Labour Court.

4. Messrs. Little & Co., Solicitor to Government, have been instructed to engage the service of Shri Seervai in proceedings before the Labour Court.

Id/-

Additional Secretary to Government.

U.R. to L. & H.D.No.3973, dated the 9th March 1951.

R.D.P.
28/6/56

S.C.

Legal Department.

Settlement between Air India Ltd. and its pilots.

Industrial Disputes Act, 1947, sec. 29.

R. L. A's opinion No. 1150, dated 12-8-50.

The terms of Clause III of the Settlement are clear and as pointed out by the R.L.A. in his opinion No.11509, dated the 12th August 1950 though the promotions are not automatic, other conditions being fulfilled, a person due for promotion to a Junior Captain's, a Captain's or a Senior Captain's grade has a right to be so promoted, and if he is so promoted, has right to get into the basic pay for that particular grade, namely, Rs. 825 for a Junior Captain, Rs. 1050 for a Captain and Rs. 1250 for a Senior Captain. Promotion to a higher grade without the basic pay attached to it cannot be considered promotion at all. In view of this it is clear that it is not open to the Company to grant promotion to its employees and to withhold the basic pay due on such promotion. Any such action on the part of the company would be a breach of the Settlement and would be an offence under section 29 of the Industrial Disputes Act, 1947.

In this particular case, however, the breach of the settlement has been made by the Company with the consent and connivance and at the express request of the employees. This can be treated as a modification of the settlement. The Industrial Disputes Act, 1947, however, does not provide for a modification of the Settlement and company's action is clearly an offence. However as the provisions of the Act are enacted for settlement of industrial disputes and a s the parties have mutually agreed to modify the settlement, the

breach in this case appears to be only a technical breach. Further considering that the breach has been caused at the instance of the 8 employees, it would be inquitable to set the law in motion and prosecute the Company. It would be desirable in these circumstances not to interfere in the matter and to leave the employees to seek their own remedy.

Id/-

Additional Secretary to Government.

U.R. to L. & H. D. No. 8667,
dated the 2nd June 1951.

R.D.P.
28/6/56

S.C.

Office of the R. L. A.

The strike of the workers of the Cooper Engineering Works, Satara, being in contravention of section 23 read with section 24(i)(i) of the Industrial Disputes Act (India Act No. XIV of 1947) is illegal.

The speeches of -

(1) Shri Joglekar,
(2) " Tushar Pandurang Powar,
(3) " R. V. Kulkarni,
(4) " Shaikh Kaka Bande Inamdar,
(5) " L. Y. Walpkar,
(6) " Raut,
(7) " D. Y. Deshpande,
(8) " Nana Ramji Patil,

read in the light of the appointment of a "strike committee" at the meeting and the passing of the strike Resolution by the meeting unanimously go to show that they instigated or incited the workers to take part in or otherwise acted in furtherance of a strike which was illegal under the Act. Therefore they can be prosecuted for having committed an offence section 27 of the Act.

Id/- (J.R.D.)

Remembrancer of Legal Affairs

U.R. to Labour H.D. No.637-Conf1,

dated the 3rd July 1951.

R.D.P.
29/6/56

S.C.

Office of the R. L. As

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Remembrnacer of Legal Affairs

U.R. to Labour H.D. No.637-Conf1,

dated the 3rd July 1951.

R.D.P.
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S.C.

Slip A

The proviso to rule 37 refers to the sub-division of the two electoral constituencies that is, constituencies formed when less than half the number of workmen are members of a union.

EVY. 5/7.

Legal Department.

The R.L.A. is requested to advise on the interpretation of the proviso to rule 37 of the Industrial Disputes (Bombay) Rules, 1947.

2. Rule 37 of the Industrial Disputes (Bombay) Rules, 1947, provides that where under rule 36 the workmen's representatives are to elected in two groups, the workmen entitled to vote shall be divided into two electoral constituencies, the one consisting of those who are members of a union and the other of those who are not. The proviso to that rule is as follows:

> "Provided that the employer may, if he thinks fit, sub-divide the two electoral constituencies and direct that workmen shall vote in either by groups, sections, shops or departments."

The Secretary, Labour Department, considers that it is open to an employer to providef for voting by either groups, sections, shops or departments, whether there be two electoral constituencies or only a single electoral constituency. Having regard to the language of the provides to rule 37 view appears untenable. Rule 36 provides that there shall be two groups of representatives elected on the Works Committee: (i) representatives elected by workmen who are members of unions and (ii) representatives elected by workmen who are not members of any union. Rule 37 shows that two electoral constituencies shall be formed only in those cases in which representatives are to be elected in two groups. There cannot be two constituencies in cases contemplated by the proviso to rule 36 namely, where more than half the number of workmen are members of Union. Under that proviso, therefore, it would not be feasible to divide the constituency in

Slip A

groups, sections, shops or departments were more than half the number of workmen are members of a union. Rule 37 and the proviso thereto apply only in cases where there are two electoral constituencies. It is true that rule 33 says that, subject to the maximum of 20 members, the number of members constituting the Committee shall be so fixed as to afford representation to the various categories, groups and classes of workmen engaged in, and to the sections, shops or departments of the establishment. All that this rule lays down is that in fixing the number of members constituting the Committee, various categories, groups, classes of workmen etc. in the establishment shall be taken into account. In other words, it lays down that the number of members constituting the Committee should be sufficiently large so as to provide scope for various categories, groups and classes of workmen to secure representation. That is clear also from the heading "Number of members" to that rule Rule 33 does not say that various categories, groups and classes of workmen shall separately elect representatives on the Committee. If the intention of Rule 33 had been to make separate representation for various categories, classes or groups of workmen incumbent or mandatory, the proviso to Rule 37 would be redundant and even inconsistent with Rule 33 in as much as it makes the representation of various categories, classes groups of workmen optional at the discretion of the employer.

R.D.P.
28/6
S.C.

Id/-

Additional Secretary to Government.

U.O.No. Labour & Housing Deptt. No. 10560,
dated the 3rd July 1951.

Legal Department.

The relevant provision, namely, sub-section (3) of section 19, as substituted by Act XLVIII of 1950, is as follows:-

"(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year:

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation."

The first proviso could be construed to mean that Govt. may either.

(i) limit the operation of the award to less than one year while while publishing that award, or

(ii) during the currency of the award reduce the period from one year to less than one year.

It would, therefore, be legally feasible for Government at this stage, if they so deem fit, to reduce the period of the award from one year.

Sd/-

Additional Secretary to Government.

U.R. to Labour & Housing Deptt. No. 10795,

dated the 9th July 1951.

R.D.P.
23/6/56

S.C.

Legal Department.

Payment Compensation- Dispute between M/s Wolverhampton Works Ltd. and their workers.

One of the terms of the Settlement published in the Bombay Government Gazette dated 19th October 1950 was that if during the period September 1950 to 31st December 1950 the services of any worker are terminated for reasons other than those amounting to misconduct such worker will be entitled to 15 days' wages including dearness allowance as compensation for each completed year of service. According to the terms of the Settlement compensation was payable if the services were terminated during the period ending with 31st December 1950. In the present case though the notice at Exp.9 of the Commissioner's papers states that the services would terminate on 31st December 1950, they were in fact terminated with effect from 1st January 1951 as the workers were in employment for the whole of the month of December 1950. If necessary the Labour and Housing Department should verify this fact by reference to company's books and if the contention of the company that the services were terminated with effect from 1st January 1951 be found true, it would be obvious that the aforesaid term of the Settlement cannot be invoked and the workers would not be entitled to compensation thereunder. The stand taken by the company appears to be legally correct.

Id/-

Additional Secretary to Government.

U.O. to Labour & Housing Department No.10926,
dated the 11th July 1951.

R.D.P.
28/6/56

S.C.

Office of the R.L.A.

Demand of decrease of dearness allowance.

Industrial Disputes Act, 1947.

Secretary, Labour and Housing Department observes:-

"Since the demand for increase in dearness allowance has gone to adjudication, I suppose it is open to the employer to argue before the Court that not merely should there be no increase but in fact the dearness allowance should be decreased."

The R.L.A. is requested to confirm and advise in the matter.

The demand regarding dearness allowance which is referred to adjudication is as follows:

"Those workmen who were not paid dearness allowance should be paid dearness allowance at the same rate as is paid to the permanent workmen." This demand is not for increase of dearness allowance but for extension of the benefit of the dearness allowance to workers who are at present excluded. The demand which the employers want to press is as follows:-

"That the existing dearness allowance paid to the workmen be discontinued and the dearness allowance be paid on and after 1st June 1951 at the rate of 50% on the Bombay Millowners' scale."

This demand of the employers is distinct and separate from the demand which has been referred to adjudication and in the circumstances, it would not be possible for the employers to press for reduction of the dearness allowance at the time of adjudication of the workers' demand for extension of the benefit to other categories of workers.

R.D.P. 2816 5.C.

Id/Rm

Remembrancer of Legal Affairs.

U.R.to L.& H.D.No.11719,dated the 24th July '51

Office of the R. L. A.

The expression "industrial dispute as defin in clause (k) of section 2 of the Industrial Disputes Act, 1947, means any dispute or difference between employer and employees, or between employer and workman or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. It is clear that Union was not satisfied with the bonus equivalent to 1¾ months' salary sanctioned by the management and it had requested sanction of higher amount of bonus on 29.10.1950, That was however only a request and not a demand. But in their letter of 4-11-1950 the Union had served a demand for bonus equal to six months' salary. Thus it is clear that demand for higher amount of bonus was made to the management and merely because the workmen had taken the amount of bonus at 1¾ Months' salary, whether with or without protest, it cannot be held that the Union had dropped their demand or that the dispute or difference had ceased to exist or that they were debarred from claiming a higher rate. It is immaterial in this context whether the demand made by the Union in their letter of 4.11.1950 reached the management either before the bonus amount was received by the workers or thereafter. What the workers did was to take what was given and raised the question of its adequency by their demand. Even the subsequent reference of the dispute to the Conciliation Officer makes it clear that the dispute between the managment and the Union on the point of quantum of bonus still exists. The answer to question, therefore, appears to be in the affirmative.

R.D.P.
28-6.
5.C.

Id/-

Remembrancer of Legal Affairs.

U.R. to L.& H.D.No.12755,dated the 8th August 1951.

L.D.R.I.No.16439 d.7-8-51.

Submitted.

The facts of the case are stated in detail in the Lab. & Housing Department note d.3-8-1951 at pp-95-99 ante. In brief the facts are as follows:

An award was made by the Industrial Tribunal against the Wallace Flour Mills, Bombay and Govt. directed that the same should remain in operation for a year with effect from 15-12-1947. It was subsequently reported to Govt. that the co. had refused to pay gratuity to discharged workmen as per award on the ground that they were not in employment when the award was brought into force. On a reference to R.L.A. about prosectuion, the R.L.A. advised in his ~~x~~ opinion No3061 dated the 29th March 1948 that a prosecution would be feasible. ~~X~~ A prosecution was accordingly launched but the Co. got it stayed and itself filed a suit in the High Court challenging the validity of t he award itself (suit No.2489 of 1948). The Lab. Deptt. considers that the award is vulnerable as a similar award in the case of Bombay Garage has been quashed by Justice Tendolkar and his view has been held to be correct by the R.L.A. Besides, the Co. has, it appears, made payment to the workers as per their demand which falls short of the scale awarded by the Adjudicator by a small amount only. Further the Lab. Union which had moved Govt. to file the prosecution has also intimated that it is not in the interest of t he labour that the compld should be prosecuted (p.85 ante). The Lab.Deptt., therefore, proposes to withdraw the prosecution. R.L.A. is, however, shown the papers for advice.

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Legal Department.

In view of the facts stated in the Labour and Housing Department note there is no objection withdraw the prosecution and the public Prosecutor may be directed to withdraw the same.

Id/-

Additional Secretary to Government.

U.R. to L. & H.D., No. 15161,

dated the 17th August 1951.

R.D.P.
28/6/56

S.C.

Legal Department.

It appears that before the merger of the Baroda State in the Bombay State the Baroda Government handed over to the Baroda Municipality as a gift the Baroda Electric Supply concern and the Baroda State Electric Workers Union has now given notice for adjudiction in respect of certain demands two of which demands are:

(9) All workers should be allotted a special bonus equivalent to 25% of the total reserve fund accumulated so far including the amounts transferred to the Municipality, and also the amounts taken over by the Bombay Government from the Ex-Baroda-Government. The amount so allotted should be equitably distributed to all the employees.

(11) All the employees of the department should get free electric current for domestic use.

In view of these demands the following two questions are raised for R.L.A's consideration:-

(1) Whether the Bombay Government should be made a party to the adjudication and the Tribunal should be requested to hear the Bombay Government; and

(2) Whether it is incumbent upon Government to refer all the demands to adjudication including the aforesaid two demands namely (9) and (11).

Under the proviso to section 10(1) of the Industrial Disputes Act, 1947 (India Act XIV of 1947), "where the dispute relates to a public utility service and a notice under section 22 has been given, the appropriate Government shall, unless it considers that the notice has frivolously or vexatiously been given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced." 'Industrial dispute' as defined in section 2 clause (k) means any dispute or difference between employers and employers, or

between employers and workmen or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person." Since the Baroda Government transferred the Baroda Electric Supply Concern to the Baroda Municipality the Baroda Municipality would be deemdd to be the employer and no dispute, if any, between the Baroda State Electric Workers Union and the Bombay State Government in respect of any reserve fund would be an industrial dispute which could be referred for adjudication under proviso to section 10(1). It would not, therefore, be competent to make the Bombay State Government a party to the adjudication. Nor could any request be made to the Tribunal to hear the Bombay State Government as no award can be passed by the Tribunal against the Bombay State Government. It appears from the order passed by the a Baroda State Government that the Baroda Electric Supply concern should be handed over to the Municipality as a gift with the various funds of the Electric Department like the Revenue Fund, depreciation fund etc. The Secretary, Finance Department in his not at pp.55-56 ante has stated that "the amount of the reserve fund was directed by an order of the Baroda Government to be utilized for the expenditure on the conversion and Grid Scheme. No decision has as yet been taken as to the exact amount to be paid to the Municipality in this respect. Part of the Schemes is being executed by Government and part of the scheme is being executed by the Municipality and the manner in which the reserve fund is to be apportioned isn still a matter for decision." Whether the reserve fund should bem utilised for the purpose as direct

by the Baroda Government or any part thereof should be given to the labourers as compensation for the labour involved in the accumulation of t he reserve fund is a matter which the Tribunal will have to adjudicatémm. All the demands of the Union constitute the industrial dispute in respect of whidh a notice has been given. It appears, therefore, that unless the Government think it expendient to refer the dispute to a Tribunal, the whole dispute including demands at Nos. 9 and 11 will have to be referred to adjudication and the Tribunal left to decide whether innview of the circumstances namely, the direction of the Baroda State Government and the pending decisionm of the Bombay State Government as to the apportionment of t-he reserve fund, the Tribunal would like to adjudicate evenm in respect of t he demand No. 9 Demand No. 11 present no such difficulty and can be included in the referenee for adjddication.

Id/-

Additional Secretary to Government.

U.R. to L. & H.D.No. 13418,dated the 22nd August'51.

R.D.P.
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Office of the R.L.A.

If a reference is to be made under section 10(2) of the Industrial Disputes Act, no doubt Government would be bound to make it if it is satisfied that the persons applying represent the majority of each party. It appears that in the present case the persons who ha ve applied to Government for making the reference represent the majority of each party; but even though the persons who have applied represent the majority of each party. Government will have to consider whether the dispute proposed for reference is an industrial dispute. As stated by the R.L.A. in his last opinion, no dispute between the Baroda State Electric Workers' Union and the Bombay State Government in respect of any reserve x fund can be considered as an industrial dispute between the Municipality and workers. If so, the demand at No. 9 would not come under industrial dispute within the meaning of section 2(k) in so far as it relates to the amount taken over by the Bombay Government from the ex-Baroda Government. Unless the parties agree to delete this part of the demand from the dispute, it appears it would not be obligatory on Government to refer the dispute under section 10(2) even though the persons applying represent the majority of each party.

Id/-

Remembrancer of Legal Affairs.

U.R. to L. & H.D.No.15344, dated the 25th September 1951.

R.D.P.
28/6/56

S.C.

Office of the R.L.A.

The question raised for the R.L.A's consideration is whether after the expiry of 14 days of the commencement of the conciliation proceedings as provided in section 12(6) of the Industrial Disputes Act, 1947, the conciliation proceedings would lapse and the management would be immune from section 33.

Section 12(6) of the Industrial Disputes Act provides that a report under this section shall be submitted within 14 days from the commencement of the conciliation proceedings or within such shorter period as may be fixed by the appropriate Government. Section 33 requires an employer not to change the conditions of service, etc., during the pendancy of conciliation proceedings. Section 20 (2)(b) provides: "A conciliation proceeding shall be deemed to have concluded where no settlement is arrived at, when the report of the Conciliation Officer is received by the appropriate Government or when the report of the Board is published under section 17 as the case may be." It appears from these provisions that conciliation proceedings would be deemed to be pending until the report of the Conciliation Officer is received by the appropriate Government and under section 12(6) a report of the success or otherwise of the conciliation proceedings shall be submitted within 14 days of the commencement of those proceedings or within such shorter period as may be fixed by the appropriate Government. It is no doubt true that a report is required to be submitted within 14 days of the commencement of the conciliation proceedings and this provision as worded appears to be mandatory. However, "it has often been held, for instance,

when an Act ordered a thing to be done by a public body or public officers and pointed out the specific time when it was to be done, that the Act was directory only and might be complied with after the prescribed time." (Maxwell,8th Edition p.326). Section 12(6) imposes a duty on the Conciliation Officer to submit his report within 14 days of the commencement of the conciliation proceedings. Consequently, that provision will have to be construed as directory only and might be complied with even after the expiry of 14 days. It would, therefore, follow that the conciliation proceedings would not lapse by reason of the expiry of 14 days as provided in section 12(6). What that provision requires is that the report should be submitted within 14 days of the commencement of the conciliation proceedings and as stated above it would be competent for the Conciliation Officer to submit such report even after the expiry of 14days. As stated above, the conciliation proceedings would be deemed to the pending until the report of the Conciliation Officer is submitted to Government. Consequently, the employer would not be entitled to change the conditions of service under section 33 until the report of the Conciliation Officer is received by Government even though 14 days have elapsed from the commencement of the conciliation proceedings. The argument of the management as stated by the Commissioner of Labour at page 7 that the conciliation proceedings would be deemdd to be over after the period of 14 days is not correct.

R.D.P.
24/6
S.C.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to L. & H.D.NO./5333,dated the 25th September 1952.

Legal Department.

Industrial Disputes Act, 1947 - section 12(6) 20(1) and 33.

Commencement of conciliation proceedings -

In R.L.A's opinion No. 15333, dated the 25th September 1951, the question whether after the expiry ~~the~~ of 14 days of the commencement of the conciliation proceedings as provided in section 12(6) of the Industrial Disputes Act, 1947 the conciliation proceedings would lapse and the management would be immune from section 33 was answered in the negative for reasons stated therein. The Labour and Housing Department has now requested the R.L.A. to advise on the point as to the time from which the conciliation proceedings shall be deemed to have commenced before the conciliation officer in respect of disputes other than those relating to public utility services.

2. Section 33 makes it an offence for an employer during the pendency of any conciliation proceedings to alter to the prejudice of the workmen concerned the conditions of services. "Conciliation proceeding" as defined in clause (e) of section 2 means any proceeding held by a conciliation officer or Board under the Act. Therefore, alteration of conditions of service during the pendency of conciliation proceedings before a conciliation officer would also amount to an offence. It is true that sub-section (1) of section 20 does not specifically provide when a conciliation proceeding before a conciliation officer shall be deemed to have commenced. That provision of the Act refers only to cases (1) when conciliation proceedings are undertaken by a Board to whom the dispute is referred by Government, and (2) when conciliation proceedings by a conciliation officer are undertaken following a notice of a strike or lock out under sec-

section 22 in respect of a public utility service In the absence of a statutory provision as to when conciliationn proceedings before a conciliation officer in respect of disputes other than those relating to public utility services shall be deemed to commence, the only reasonable view that can be taken is that such conciliation proceedings commence when in fact they commence In other words the conciliation proceedings shall be deemed to commence when the conciliation officer does some overt act with ax view to bring about an amicable settlement. This is, however, a question of fact and will depend on the facts of each case- In this connection attention is invited to section 12 which inter alia says that where an industrial dispute exists or is apprehended, the conciliation officer may hold conciliation proceedings in the prescribed manner. Rule 5A of the Rules made under the Act provides as follows:

> On receipt of information about an existing or apprehended industrial dispute or where the dispute relates to a public utility service on receipt of a notice of strike or lock-out given under Rule 27 or Rule 28, the Conciliation Officer shall forthwith arrange to interview both the employer and the workmen concerned with the dispute at such places and at such times as he may deem fit and shall endeavour to bring about a settlement of the dispute in question."

Ordinarily, therefore, the conciliation proceedings can be deemed to commence and when the Conciliation Officer commences to act under the above rule.

Id/-

Additional Secretary to Government.

U.R. to L.& H.D.No.17587,dated the 6th November 1951.

R.D.P.
29/6/56

S.C.

Office of the R. L. A.

The employees of the Edison's Continental Laboratories Ltd. and Continental Drug Company Ltd. formed themselves into a Union in the first week of October 1951 and on 9th October submitted certain demands to the management through elected representatives. The management gave no response to their demands; and therefore on 19th October 1951 they approached the Conciliation Officer for intervention The Conciliation Officer took up the matter and fixed a meeting with the workers and the management on 26th October, The management, however, requested adjournment and on the next day i.e. on 27th October 1951, filed an application under section 33 of the Industrial Disputes Act seeking permission to discharge 19 workmen and to transfer 5 to Poona for the reasons given in the application. The hearing of this application was fixed on 7th November 1951; but as the date did not suit the management, it was postponed to 12th November 1951. On the 8th November 1951, the management informed the Conciliation Officer that the demands were not properly presented and that he should not proceed with the proceedings. On 10th November, the management again wrote to the Conciliation Officer withdrawing their application dated 27th October 1951 and informed him that as the period of 14 days prescribed in section 12(6) had expired no further proceedings should be held. Subsequently on 12th November 1951 the management discharged 29 workers and these workers have requested that action should be taken against the management. In view of the attitude of the management and the tactics adopted by it, the conciliation proceedings could not be held and the conciliation officer submitted the

necessary report on 13th November which was received by Government on 14th. The question now for consideration is whether a prosecution for contravention of section 33 would be feasible The Secretary, Labour and Housing Department considers that the case is weak and that section 12(6) may be strictly construed if a prosecution is undertaken. But the R.L.A. is requested to advise.

2. Section 33 of the Industrial Disputes Act, 1947, enacts that "during the pendency of any conciliation proceedings or proceedings before a Tribunal in respect of any industrial dispute, no employer shall (a) alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or (b) discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute save with the express permission in writing of the conciliation officer, Board or Tribunal, as the case may be." In the present case, the management has admittedly discharged the workmen; and the conciliation proceedings were also pending before the Conciliation Officer at that time but the question is whether by virtue of the provisions of section 12(6), the management can plead that the conciliation proceedings should be deemed to have ended by expiry of the maximum period of 14 days. In his opinion No. 15333 dated the 25th September 1951, the R.L.A. has held that the period of 14 days prescribed in section 12(6) is only directory and not mandatory and that the employer would not be entitled to change conditions of service under

section 33 until the report of the Conciliation Officer is received by the Government. Moreover, in this case it was at the instance of the management itself that the conciliation proceedings were first adjourned and even the management went to the length of filing an application that further adjournment had to be given. The report in this case was received by Government on 14th November while workers were discharged on 12th November. There is, therefore, a prima facie case for prosecution, though it is doubtful what view a court would take.

Id/- (J.R.D.)

Remembrancer of Legal Affairs.

U.R. to L. & H. D., No. 20164,
dated the 18th December 1951.

R.D.P.
29/6/56

S.C.